



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 18th day of January 1996

Served January 18, 1996

AMERICAN EAGLE

Violations of 49 U.S.C. §41712 and
14 CFR 399.84

CONSENT ORDER

This consent order concerns violations of 49 U.S.C. § 41712 and the price advertising requirements in 14 CFR 399.84 by American Eagle. This order directs American Eagle to cease and desist from future violations and to pay compromise civil penalties.

As a U.S. certificated air carrier, American Eagle is subject to the Department's policy on price advertising embodied in 14 CFR 399.84. When advertisements do not conform to the requirements of section 399.84, they also violate 49 U.S.C. § 41712, the statutory provision which prohibits unfair or deceptive practices or unfair methods of competition. Section 399.84 requires that any advertising or solicitation which states a price for air transportation must state the entire price to be paid. The Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) has, as a matter of enforcement policy, permitted carriers to state separately in fare advertisements any charges that are imposed or approved by the government on a per-passenger basis, such as customs, immigration, or agriculture inspection ticket surcharges, international departure taxes and security and passenger facility ticket surcharges, only if such fees are clearly noted elsewhere in the advertisement and their amount stated. See, e.g., Orders 93-4-40 and 92-10-41.¹

American Eagle published each-way fare advertisements which appeared in both the *New York Times* and *Long Island Newsday* on May 16 and May 30, 1995. These advertisements promoted introductory fares from New York's JFK airport to four cities in Canada. Although the main body of the advertisements list various fares, the small print disclaimer

¹ Any taxes imposed on a percentage basis must be included in the advertised fare.

at the bottom of each ad states, " Government taxes and fees are not included." The ads described above did not state the amount of those taxes and fees. This failure and the failure to include the amount of the government taxes and fees in the advertised fares made it impossible for consumers to determine the full price to be paid for the advertised transportation, and therefore constitute violations of section 399.84 of our regulations and 49 U.S.C. § 41712.

In mitigation, American Eagle states that the deficiencies were the result of its inexperience with advertising U.S.-Canada fares. According to the carrier, the advertised services were American Eagle's first-ever flights to Canada, made possible by the new U.S.-Canada Air Transport Agreement, and, unfortunately, the persons preparing the advertisements in question did not include the amounts of the taxes and fees. American Eagle states that this is the first time the Department has ever charged it with advertising violations and that, upon learning of the deficiencies, it took immediate and decisive steps to ensure that similar problems would not recur. These steps included educating all individuals responsible for preparing or reviewing fare advertisements about taxes and fees, and revising the internal checklist for regulatory compliance.

The Enforcement Office has carefully considered the information provided by American Eagle. However, it continues to believe that enforcement action is warranted in connection with these advertisements. In this regard, the Enforcement Office and American Eagle have reached a settlement of this matter. In order to avoid litigation and without admitting or denying the alleged violations, American Eagle has agreed to a settlement of this matter with the Enforcement Office. American Eagle consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and section 399.84 of the Department's regulations (14 CFR 399.84) and to the assessment of \$20,000 in compromise of potential civil penalties. Of the assessed civil penalty, \$10,000 shall be paid under the terms described below. The remaining \$10,000 will be suspended and forgiven if American Eagle promptly remits payment and refrains from further violations of the price advertising requirements of 14 CFR 399.84 for a year from the service date of this order. This order and the penalty it assesses will provide an adequate deterrence to future noncompliance by American Eagle as well as by other domestic and foreign air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that American Eagle violated 14 CFR 399.84 by failing to state the total price to be paid for the advertised air transportation in the fare advertisements that it published in the *New York Times* and *Long Island Newsday* on May 16 and May 30, 1995;

3. We find that by engaging in the conduct and violations described in paragraph 2 above, American Eagle also violated 49 U.S.C. § 41712;
4. American Eagle and all other entities owned or controlled by or under common ownership with American Eagle and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41712 and 14 CFR 399.84;
5. American Eagle is assessed \$20,000 in compromise of potential civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this amount, \$10,000 shall be paid within 15 days of the service date of this order by wire transfer. The remaining \$10,000 shall be suspended for one year following the service date of this order, and shall be forgiven unless American Eagle fails to comply with the payment provisions of this order or violates the requirements of section 399.84 or this order during the year following service of this order, in which case the entire unpaid portion of the assessed penalty shall become due and payable immediately; and
6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered will subject American Eagle to assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)